

APPLICANT(S): LEVY, Andrew
SERIAL NO.: 10/748,177
FILED: December 31, 2003
Page - 4 -

REMARKS

Claims 1, 12-15, and 26-28 were pending in the application. Claim 1 has been amended.

In the Advisory Action mailed November 17, 2008, the Examiner indicated that the previously-submitted response and accompanying publication (Milman et al.) did not place the application in condition for allowance because a post-filing date reference must be submitted in the form of a declaration or affidavit, according to MPEP 716.02(g).

In a telephone conversation with the Examiner on December 18, 2008, the Examiner stated that the Applicant may submit a Declaration and she would consider it.

Enclosed with this paper is a Declaration of inventor Andrew P. Levy, made in accordance with M.P.E.P. 716.02(g) to establish that the representations made in the prior submitted response to final Office Action regarding the Milman et al. publication are correct. The full citation of the Milman et al. reference is below, and a copy is appended hereto.

Uzi Milman, Shany Blum, Chen Shapira, Doron Aronson, Rachel Miller-Lotan, Yefim Anbinder, Junia Alshiek, Lawrence Bennett, Maria Kostenko, Michelle Landau, Shlomo Keidar, Yishai Levy, Alexander Khemlin, Arman Radan and Andrew P. Levy, 2008, "Vitamin E supplementation reduces cardiovascular events in a subgroup of middle-aged individuals with both type 2 diabetes mellitus and the haptoglobin 2-2 genotype: a prospective double-blinded clinical trial," published in *Arteriosclerosis, Thrombosis and Vascular Biology*, vol. 28, pp. 341-7 (Epub 2007 Nov 21; "Milman et al.").

As stated in the Declaration, inventor Andrew P. Levy declares that vitamin E supplementation reduces cardiovascular events including myocardial infarction in individuals age 55 and older with DM and the Hp 2-2 genotype. The Declaration provides the requisite assurance that statements provided in the prior response regarding the publication are correct.

In light of the Declaration, withdrawal of the rejection and allowance of the pending claims is respectfully requested.

Applicant amended claim 1 from "treatment of myocardial infarction" to "prevention of myocardial infarction" to be consistent with the language of claim 15 ("prevent myocardial

APPLICANT(S): LEVY, Andrew
SERIAL NO.: 10/748,177
FILED: December 31, 2003
Page - 5 -

infarction”) and to be aligned with the finding of the Milman et al. paper as supported by the Declaration. Entry of the amendment is respectfully requested.

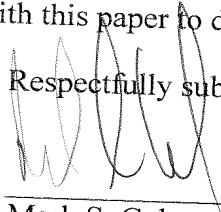
Furthermore, rejoinder of the withdrawn claims of Group I, claims 6-11 and 20-25, is requested.

Applicant notes that the Declaration is being submitted after final rejection and after the filing of a Notice of Appeal. Applicant believes that the submission of the Declaration is timely, noting that the requirement set forth in MPEP 715.09 for earlier submission of declarations specifically refers to declarations under 37 C.F.R. 1.131 (to prior invention), whereas the instant declaration pertains to 37 C.F.R. 1.132. Entry of the declaration is respectfully requested.

Should the Examiner have any question or comment as to the form, content or entry of this Amendment, the Examiner is requested to contact the undersigned at the telephone number below. Similarly, if there are any further issues yet to be resolved to advance the prosecution of this application to issue, the Examiner is requested to telephone the undersigned.

Please charge any fees associated with this paper to deposit account No. 50-3355.

Respectfully submitted,



Mark S. Cohen
Attorney/Agent for Applicant(s)
Registration No. 42,425

Dated: January 22, 2009

Pearl Cohen Zedek Latzer, LLP
1500 Broadway, 12th Floor
New York, New York 10036
Tel: (646) 878-0800
Fax: (646) 878-0801

Encs: Declaration of Andrew P. Levy
Milman et al. publication